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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DETLEF RENNER

Appeal 2009-006090
Application 10/554,003
Technology Center 3600

Decided: March 2, 2010

Before JENNIFER D. BAHR, STEFAN STAICOVICI, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Detlef Renner (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 17-25 and 28-35. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM-IN-PART.

THE INVENTION

Appellant's claimed invention is directed to devices for displacing gas turbines during maintenance (Spec. 1: para. [0001]).

Claims 17, 25, 34 and 35, reproduced below, are representative of the subject matter on appeal.

17. A device for displacing gas turbines or gas turbine modules, comprising a gas turbine conveying device, the conveying device being raisable to a raised state and lowerable to a lowered state, the conveying device configured to support and move a gas turbine or gas turbine module when the conveying device is in the raised state.

25. A device for displacing gas turbines or gas turbine modules, comprising:
a gas turbine conveying device;
a holding device for supporting a gas turbine or gas turbine module, the holding device cooperating with the conveying device such that the holding device, and the gas turbine or gas turbine module supported thereon, are movable by moving the conveying device.

34. A method for displacing gas turbines or gas turbine modules, comprising the steps of:
raising a conveying device into a raised state such that a gas turbine or gas turbine module to be moved is raised, and
moving the conveying device such that the gas turbine or gas turbine module is moved.

35. A method for displacing gas turbines or gas turbine modules, comprising
supporting a gas turbine or gas turbine module to be moved on a holding device;
moving the holding device and the gas turbine or gas turbine module by moving a conveying device which is cooperatively engaged with the holding device.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Shyr	US 5,743,375	Apr. 28, 1998
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The following rejections by the Examiner are before us for review:

1. Claims 17, 18, 20-25, 28-32, 34 and 35 are rejected under 35 U.S.C. § 102(b) as being anticipated by Shyr.
2. Claims 19 and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shyr.

ISSUES

The issues before us are:

- (1) whether the Examiner erred in finding that Shyr describes a gas turbine conveyor as called for in independent claims 17 and 25, that is, whether the words “gas turbine” before the word “conveyor” imparts patentability to claims 17 and 25 (App. Br. 4);
- (2) whether the Examiner erred in finding that Shyr describes a conveying device that is raised or lowered pneumatically as called for in claim 23 (App. Br. 5);

(3) whether the Examiner erred in finding that Shyr describes that (1) “the lifting device [is] configured to raise and lower the gas turbine . . . when the conveying device is immobilized” as called for in claim 30 (App. Br. 5); and (2) “the lifting device is configured to raise and lower the holding device as well as the gas turbine . . . when the conveying device is immobilized” as called for in claim 31 (App. Br. 5);

(4) whether the Examiner erred in finding that Shyr describes a lifting device “situated in an area of each work station” as called for in claim 32 (App. Br. 5);

(5) whether the Examiner erred in finding that Shyr describes a gas turbine as called for in claims 34 and 35 (App. Br. 6);

(6) whether the Examiner erred in concluding that it would have been obvious to have the conveying device of Shyr “integrated into a floor of a workshop” as called for in claim 19 (App. Br. 6); and

(7) whether the Examiner erred in concluding that it would have been obvious to use a hydraulic lifting device in Shyr based on design and space parameters for Shyr’s apparatus (App. Br. 7).

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

The Examiner’s Findings

1. The Examiner finds that in Shyr, “[t]he claimed structural elements are clearly depicted on the *previously attached cover sheet and*

drawing figure 2^[1], with one exception, pneumatic lifting (as indicated at 91) was in error, however, the lifting chain device 71 contains eccentric cams 34 and 35 which perform the lifting function.” (emphasis added) (Ans. 3).

2. The Examiner, in the cover sheet, points to Shyr as describing a holding device, and as inherently including work stations. (*See* Fact 1 and footnote¹).
3. The Examiner finds that in regards to the device claims, “[t]he mere claiming of a ‘gas turbine’ in front of a conveyor does not add a patentable departure from the device of Shyr et al.” (Ans. 4).
4. The Examiner finds that “[t]he same argument holds true for the method claims^[2].” (*See* Fact 3) (Ans. 4).
5. The Examiner finds that Shyr describes all of the limitations called for in claims 19 and 33, except that Shyr does not describe “having the conveyor integrated into the floor [claim 19] and using a hydraulic means to lift his [sic] chain conveyor [claim 33].” (Ans. 4).
6. The Examiner concludes that in regards to claims 19 and 33,

it would have been an obvious matter of design choice as to what type of known lifting device is used [claim 33] or on what type of surface the device is placed [claim 19] based on the exact design parameters of the specific invention at hand. Such design parameters would depend on (a) the space available for the

¹ The *previously attached cover sheet and drawing figure 2* referenced above was attached to the non-final Office action mailed April 17, 2007.

² Claims 34 and 35.

device, (b) the weight of the articles and (c) the power required to raise the chains . . .

(Ans. 4).

The Board's Findings

7. Shyr describes: (a) a conveyor transfer apparatus installed below a conveyor for transferring an article 9 from a main conveyor 1 to a secondary conveyor 2 (col. 2, ll. 16-23 and fig. 6); (b) the main conveyor 1 includes rollers 11 (col. 2, ll. 24-44 and fig. 1); and (c) the apparatus comprises a motor 30, eccentric sleeves 61-64, sprockets 34-37, and side-roller-chains 71, 72. (col. 2, ll. 46-63).
8. Shyr describes that the “top surface of the chain 71 will be moved alternatively from below to above the top surface of roller 11.” (col. 2, l. 64- col. 3, l. 1).
9. Shyr describes that:

Referring to FIG. 6, when an article 9 being moved from main conveyor 1 to secondary conveyor 2, article 9 is first carried above the transfer apparatus of the invention, then is stopped by a stopper [*sic*] of the conveyor or by the stopping of the rollers. Motor 30 is then activated and drives sprockets 34, 35, 36 and 37 and side-roller-chain 71, 72 which are lifted by eccentric sleeves 61, 62, 63 and 64. When chains 71 and 72 are moved above the rollers 11, article 9 is lifted and carried in a tangential direction . . .

(col. 3, ll. 22-40).
10. Appellant has not contested the Examiner’s finding regarding Shyr describing a holding device. (*See Fact 2*).

11. Shyr is silent as to whether the conveyor transfer apparatus is integrated into a floor of a workshop.
12. Shyr shows in figures 1 and 4 that (1) conveyors 1, 2 contain supports for rollers 11, and (2) the transfer conveyor apparatus is formed as an integral self-contained apparatus.
13. The ordinary meaning of the word “workstation” includes “an area with equipment for the performance of a specialized task usu. by a single individual.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1996).
14. The ordinary meaning of the word “integrate” includes “to form.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1996).
15. Additional findings as necessary appear in the Analysis portion of this opinion.

PRINCIPLES OF LAW

Appellant’s Burden

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). *See also Ex parte Yamaguchi*, 88 USPQ2d 1606, 1614 (BPAI 2008) [burden on appeal] (on appeal, applicant must show examiner erred); *Ex parte Fu*, 89 USPQ2d 1115, 1123 (BPAI 2008); *Ex parte Catan*, 83

USPQ2d 1569, 1577 (BPAI 2007); and *Ex parte Smith*, 83 USPQ2d 1509, 1519 (BPAI 2007).

Examiner's Burden

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *see also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984).

Anticipation

“Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention.” *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying

factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”).

In *KSR*, the Supreme Court noted that “[t]o facilitate review, this analysis should be made explicit.” *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”)). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

In *KSR*, the Supreme Court held that “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.” *Id.* at 421.

The legal conclusion of obviousness must be supported by facts. Where the legal conclusion is not supported by facts it cannot stand.

....

A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. In making this evaluation, all facts must be considered. The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.”

In re Warner, 379 F.2d 1011, 1017 (CCPA 1967).

Claim Interpretation

“[I]nclusion of the material or article worked upon by a structure being claimed does not impart patentability to the claims.” *In re Otto*, 312 F.2d 937, 940 (CCPA 1963).

Inherency

Under principles of inherency, when a reference is silent about an asserted inherent characteristic, it must be clear that the missing descriptive matter is necessarily present in the thing described in the reference.

Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268 (Fed. Cir. 1991).

ANALYSIS

Rejection of claims 17, 18, 20-25, 28-32, 34 and 35 under 35 U.S.C. § 102(b) as being anticipated by Shyr

Claims 17, 18, 20-22, 24, 25, 28 and 29

Appellant argues claims 17, 18, 20-22 and 24 as a group, and claims 25, 28 and 29 as a group (App. Br. 4). As such, we select claims 17 and 25

as representative of the groups, and claims 18, 20-22, 24, 25, 28 and 29 will stand or fall with claims 17 and 25, respectively. 37 C.F.R. §41.37(c)(1)(vii) (2007).

Appellant argues claims 23, 30-32, 34 and 35 separately (App. Br. 5-6).

Appellant contends that Shyr does not describe a gas turbine conveyor as called for in independent claims 17 and 25 as Shyr does not describe conveying any type of gas turbine (App. Br. 4).

The Examiner found that in regards to the device claims, “[t]he mere claiming of a ‘gas turbine’ in front of a conveyor does not add a patentable departure from the device of Shyr et al.” (Fact 3).

Claims 17 and 25 call for, *inter alia*, a gas turbine conveying device.

It is well established that the particular article conveyed does not impart patentability to independent claims 17 and 25. *See In re Otto*, 312 F.2d at 940 (holding that the “inclusion of the material or article worked upon by a structure being claimed does not impart patentability to the claims.”).

We find that Shyr describes the particular conveyor, albeit, not a conveyor for gas turbines called for in claims 17 and 25 (Facts 7-10).

Therefore, since the particular article conveyed does not impart patentability to claims, we find that Shyr describes the conveying device as called for in independent claims 17 and 25.

Accordingly, we conclude that the Examiner has not erred in rejecting independent claims 17 and 25 over Shyr. Likewise, the Examiner has not erred in rejecting dependent claims 18, 20-22, 24, 25, 28 and 29, which stand or fall with independent claims 17 and 25, respectively.

Claim 23

Appellant contends that Shyr does not describe that “the conveying device is raised and lowered pneumatically” as called for in claim 23 (App. Br. 5).

The Examiner found that claim 23 is anticipated by Shyr as “the lifting device 71 contains eccentric cams 34 and 35 which perform the lifting function.” (Fact 1).

We find that in Shyr, the conveying device, that is, the side-roller-chains 71, 72 are raised and lowered by eccentric sleeves 61-64 (Facts 7-9), and not “pneumatically” as called for in claim 23.

Therefore, Shyr does not anticipate claim 23. *See RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984) (holding that “[a]nticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention.”).

Therefore, we conclude that the Examiner erred in rejecting claim 23 over Shyr.

Claims 30 and 31³

Appellant contends that Shyr does not describe that (1) “the lifting device [is] configured to raise and lower the gas turbine . . . when the conveying device is immobilized” as called for in claim 30 (App. Br. 5), and (2) “the lifting device is configured to raise and lower the holding device as well as the gas turbine . . . when the conveying device is immobilized” as called for in claim 31 (App. Br. 5).

³ Claim 31 depends from claim 30, and claim 30 depends from claim 25.

As we previously found regarding claim 25, it is well established that the particular article conveyed does not impart patentability to independent claims 17 and 25. *See In re Otto*, 312 F.2d at 940.

Appellant has not contested the Examiner's finding regarding Shyr describing a holding device (Fact 10, *see also* Fact 2).

Shyr describes that after the conveyor or rollers 11 are stopped, motor 30 is then activated to drive sprockets 34, 35, 36 and 37 and side-roller-chain 71, 72, which are lifted by eccentric sleeves 61, 62, 63 and 64. (Fact 9, *see also* Fact 8).

Therefore, Shyr describes that (1) the lifting device is configured to raise and lower the article when the conveying device is immobilized (stopped) as called for in claim 30, and (2) the lifting device is configured to raise and lower the holding device as well as the article when the conveying device is immobilized (stopped) as called for in claim 31.

Accordingly, we conclude that the Examiner has not erred in rejecting claims 30 and 31 over Shyr.

Claim 32

Appellant contends that Shyr does not describe a lifting device situated in the area of each work station as called for in claim 32 (App. Br. 5).

The Examiner found that Shyr inherently describes work stations (Fact 2). In particular, the Examiner annotated *the previously attached cover sheet* with the notation "inherent work stations."⁴

Appellant further contends that since the Examiner is relying on the theory of inherency, the Examiner must provide a basis in fact or technical

⁴ *See* footnote 1.

reasoning to support the determination that the necessarily inherent characteristics flow from the teachings of Shyr (App. Br. 6).

Under principles of inherency, when a reference is silent about an asserted inherent characteristic, it must be clear that the missing descriptive matter is necessarily present in the thing described in the reference.

Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268 (Fed. Cir. 1991).

Claim 32 calls for “wherein a respective lifting device is situated in the area of each work station.”

Appellant’s Specification does not provide any definition of the words “work station” or the word “workstation.” Therefore, we look to the dictionary to provide us with the ordinary meaning of the words “work station” or “workstation.” The ordinary meaning of the word “workstation” includes “an area with equipment for the performance of a specialized task usu. by a single individual.” (Fact 13). Claim 32 does not call for (1) a nexus or an association between the work station, and the lifting device, or (2) the work being performed at the work station. A person having ordinary skill in the art would understand the phrase “a respective lifting device is situated in the area of each work station,” as called for in claim 32 and in light of the ordinary meaning of the word “workstation,” to mean that the lifting device is situated in an area where a work station is located, that is, where some type of task can be performed. To satisfy the limitation of a “work station,” it is not necessary that any particular work actually be performed, only that work can be performed at the location corresponding to the “work station.”

Shyr describes that the conveyor or rollers 11 are stopped at the lifting device, that is at the side-roller-chains 71, 72, which are lifted by the eccentric sleeves 61-64 (Fact 9, *see also* Fact 8).

A person having ordinary skill in the art would recognize that when the conveyor or rollers 11 are stopped, some type of task can be, or is being, performed in the area of the stopped conveyor or stopped rollers 11.

Thus, we agree with the Examiner that Shyr inherently describes work stations (Fact 2).

Therefore, we find that Shyr describes a lifting device situated in the area of a work station as called for in claim 32.

Accordingly, we conclude that the Examiner has not erred in rejecting claim 32 over Shyr.

Claims 34 and 35

Claims 34 and 35 are reproduced below:

34. A method for displacing gas turbines or gas turbine modules, comprising the steps of:
 raising a conveying device into a raised state such that *a gas turbine* or gas turbine module *to be moved is raised*, and
 moving the conveying device such that *the gas turbine* or gas turbine module *is moved*.
(emphasis added).

35. A method for displacing gas turbines or gas turbine modules, comprising
 supporting a gas turbine or gas turbine module to be moved on a holding device;
 moving the holding device and *the gas turbine* or gas turbine module by moving a conveying device which is cooperatively engaged with the holding device. (emphasis added).

Appellant contends that (1) a gas turbine is positively called for in claims 34 and 35, and (2) Shyr does not describe the gas turbine called for in claims 34 and 35. (App. Br. 6).

The Examiner found that the mere claiming of a gas turbine in front of a conveyor does not add a patentable departure from the device of Shyr (Facts 3, 4).

The Examiner's reasoning is inapposite here, as claims 34 and 35 are method claims, and positively call for a gas turbine. Claim 34, as emphasized above, calls for, *inter alia*, raising and moving a conveying device into a raised state such that a gas turbine or turbine module is raised. Claim 35, as emphasized above, calls for, *inter alia*, supporting and moving a gas turbine.

We agree with Appellant that Shyr does not describe a gas turbine, or any manipulation of a gas turbine.

Therefore, we find that Shyr does not describe and, therefore, does not anticipate the positively recited gas turbine called for in claims 34 and 35. *See RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984).

Therefore, we conclude that the Examiner erred in rejecting claims 34 and 35 over Shyr.

Rejection of claims 19 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Shyr

Claim 19

Appellant contends that (1) “it would not have been obvious . . . to have the conveying device of Shyr ‘integrated into a floor of a workshop’” as called for in claim 19 (App. Br. 6). Appellant further contends that the

“[t]he conveying device of Shyr may not fit in the floor of a workshop.”
(App. Br. 6).

The Examiner found that Shyr does not describe “having the conveyor integrated into the floor” (Fact 5).

The Examiner concluded that it would have been an obvious matter of design choice as to the type of surface that the device was placed on, wherein the type of surface would depend on the space available for the device (Fact 6).

Claim 19 calls for, *inter alia*, “wherein the conveying device is integrated into a floor of a workshop.”

We look to the dictionary to provide us with the ordinary meaning of the word “integrate.” The ordinary meaning of the word “integrate” includes “to form.” (Fact 14).

Shyr is silent as to whether the conveyor transfer apparatus is integrated in, that is, formed in a floor of a workshop (Fact 11).

Shyr shows in figures 1 and 4 that (1) conveyors 1, 2 contain supports for rollers 11, and (2) the transfer conveyor apparatus is formed as an integral self-contained apparatus (Fact 12).

We find that if space were a premium, a person having ordinary skill in the art would place Shyr’s integrally formed conveyor transfer apparatus in a recess in a floor, as this would not change the operation of Shyr’s conveyor transfer apparatus and would predictably save space. *See KSR*, 550 U.S. at 421 (holding that “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton. . . .Where there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason

to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.”) *Id.* at 421.

Therefore, we conclude that the Examiner has not erred in rejecting claim 19 over Shyr.

Claim 33

Appellant contends that “[i]t would not have been obvious to one skilled in the art to use a hydraulic lifting device based on design and space parameters for the device.” (App. Br. 7).

The Examiner found that Shyr does not describe using a hydraulic means to lift the chain conveyor (Fact 5).

The Examiner concluded that “it would have been an obvious matter of design choice as to what type of known lifting device is used . . . based on the exact design parameters of the specific invention at hand.” (Fact 6).

Claim 33 calls for “the conveying device is raised and lowered hydraulically.”

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *see also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984).

While the Examiner’s position appears to be that the use of any known lifting device would have been obvious, the Examiner has not made any finding as to the particular type of lifting device called for in the claim, namely, a hydraulic lifting device. We find that the Examiner’s legal conclusion of obviousness (Fact 6) is not supported by facts, and thus, cannot stand. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967)

(holding that “[t]he legal conclusion of obviousness must be supported by facts. Where the legal conclusion is not supported by facts it cannot stand.”).

Therefore, we are constrained to reverse the rejection of claim 33 over Shyr.

Accordingly, we conclude that the Examiner erred in rejecting claim 33 over Shyr.

CONCLUSIONS

The Examiner has not erred in finding that Shyr describes a gas turbine conveyor as called for in independent claims 17 and 25, that is, whether the words “gas turbine” before the word “conveyor” imparts patentability to claims 17 and 25.

The Examiner has erred in finding that Shyr describes a conveying device that is raised or lowered pneumatically as called for in claim 23.

The Examiner has not erred in finding that Shyr describes that (1) “the lifting device [is] configured to raise and lower the gas turbine . . . when the conveying device is immobilized” as called for in claim 30, and (2) “the lifting device is configured to raise and lower the holding device as well as the gas turbine . . . when the conveying device is immobilized” as called for in claim 31.

The Examiner has not erred in finding that Shyr describes a lifting device “situated in the area of each work station” as called for in claim 32.

The Examiner has erred in finding that Shyr describes a gas turbine as called for in claims 34 and 35.

The Examiner has not erred in concluding that it would have been obvious to have the conveying device of Shyr “integrated into a floor of a workshop” as called for in claim 19.

The Examiner has erred in concluding that it would have been obvious to use a hydraulic lifting device in Shyr based on design and space parameters for Shyr’s apparatus.

DECISION

The decision of the Examiner to reject claims 17-22, 24, 25 and 28-32 is affirmed. The decision of the Examiner to reject claims 23 and 33-35 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

Klh

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